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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Douglas J. Tayior, Esq.  
P.O. Box 1113  
Minneapolis, MN 55440

EXAMINER

MADSEN, ROBERT A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 11/20/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/781,583

Applicant(s)

LLOYD ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 and 32-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24, 32-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The Amendment filed August 9, 2002 has been entered. Claims 25-31 have been cancelled. Claims 46-52 have been added. Claims 1-24,32-52 are currently pending.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 51 and 52 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. With respect to claim 51, a step of forming *the* plurality of pieces of dry consumable product from a plurality of pieces having an outer dimension greater than 0.4 inch does not have support in the specification.

4. Claims 51 and 52 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 51 recites "forming the plurality of pieces" of the dry consumable product "based upon an ingredient formulation of an available dry consumable product consisting of a plurality of pieces." Claim 52 recites

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“the ingredient formulation of dry food product is the same as the ingredient formulation of available dry food product.” The specification distinguishes between a dry food/consumable product and an *available dry* food/consumable product on Page 12, but “available” is not defined. Also, it is unclear how, if at all, the plurality of pieces from the *available* dry food/consumable product are different from the dry food/consumable product. For example, it is unclear if the dry food/consumable product is actually an agglomeration of a plurality of pieces, which there is no support for in the specification. For examination purposes, claims 51/52 are taken to mean forming a new dry consumable product with the same composition as a known dry consumable product and properties different from the known dry consumable product; the different properties resulting from a difference in the steps followed in forming the new dry consumable product.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 7, 11, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Silver (US 4159066) as evident by Technology of Biscuits, Crackers and Cookies (2000).

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7. Silver teaches a two-compartment container, each compartment having a pour opening for restricted flow (i.e. items 31 and 20 in Figure 1) adapted to facilitate on-the go consumption (Column 1 line 5-column 2, line 64). In other words, the container is adapted for removal of liquid and dry consumable products without a spoon or table, not spilling, and holding in a single hand (Column 4 line 15- Column 5, line 60). The products include cream and sugar (Column 4, line 56 to Column 5, line 5). Sugar has a density of not less than 225g/100cuin (e.g. 0.7-0.9 g/cc), as recited in claims 11,14 , a diameter less than 0.4 in (e.g. all grades of sugar are less than 0.4), as recited in claim 7, as evident by Technology of Biscuits, Crackers and Cookies (Page 114, Paragraph 10.2.1 and Page 120, Paragraph 10.2.1.4).

8. Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Dickerson (US 5706980) as evident by California Raisins Marketing Board Website (2000).

9. Dickerson teaches a two-compartment container with pour openings for restricted flow (see Figures) adapted to facilitate on-the go consumption (Abstract). The products include a liquid such as milk and a solid such as raisins (Column 2, line 50- Column 3, line 7). Raisins have a density of not less than 225g/100cuin (e.g. specific gravity of 1.4-1.42, or density of 1.4-1.42 g/cc at 13-15% moisture and 1.275 at 15-18% moisture, tapped density of 0.66-.78 g/ml, or poured density of 0.6-0.7g/ml) made evident by the California Raisins Marketing Board Website (<http://www.calrainins.org/Industrial/characteristics.htm>).

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10. Claims 21 and 24 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Dickerson (US 5706980).

11. Regarding claim 21, See Figures, especially items 20, 22, and 42 , which are uniformly shaped, or all spherical shaped, (Column 5, line 34- Column 6, line 15, Column 8, lines 55-67, Column 10, lines 34-40.)

Regarding claim 24, see Figure 1.

12. Claims 32,36,39, 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Silver (US 4159066) as evident by Technology of Biscuits, Crackers and Cookies (2000).

13. Regarding claims 32 and 39, Silver teaches providing a two compartment container, each compartment is fluidly connected to pour opening for restricted flow (i.e. items 31 and 20 in Figure 1) adapted to facilitate on-the go consumption of liquid and dry consumable products. In other words, the container is adapted for removal of liquid and dry consumable products without a spoon or table, not spilling, and holding in a single hand (Column 4 line 15- Column 5, line 60). Silver teaches filling each a first compartment with a liquid and a second with a solid (Column 1line 5-column 2, line 64), such as cream and sugar (Column 4, line 56 to Column 5, line 5). Sugar has a density of not less than 225g/100cuin (e.g. 0.7-0.9 g/cc), as recited in claims 39, a diameter less than 0.4 in (e.g. all grades of sugar are less than 0.4), as recited in claim 32, as evident by Technology of Biscuits, Crackers and Cookies (Page 114, Paragraph 10.2.1 and Page 120, Paragraph 10.2.1.4).

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14. Regarding claims 36 and 44, since Silver teaches the dry comestible is sugar, the comestible is uniform (i.e. it is all sugar). Additionally, as evident by Technology of Biscuits, Crackers and Cookies (Page 114, Paragraph 10.2.1 and Page 120, Paragraph 10.2.1.4), sugar has a uniform density of 0.7-0.9 g/cc.

15. Claims 39 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Dickerson (US 5706980) as evident by California Raisins Marketing Board Website (2000).

16. Regarding 39, Dickerson teaches providing two compartment container with pour openings for restricted flow adapted to facilitate on-the go consumption, dispensing a liquid such as milk into one compartment and a solid such as raisins into the other (Abstract, Column 2, line 50-Column 3, line 7). Raisins has a density of not less than 225g/100cuin (e.g. specific gravity of 1.4-1.42, or density of 1.4-1.42 g/cc at 13-15% moisture and 1.275 at 15-18% moisture, tapped density of 0.66-.78 g/ml, or poured density of 0.6-0.7g/ml ), as evident by the California Raisins Marketing Board Website (<http://www.calrainins.org/Industrial/characteristics.htm>)

17. Regarding claim 44, Dickerson teaches raisins, which have many properties that are uniform such as poured density and the level of fructose, as evident by the California Raisins Marketing Board Website (<http://www.calrainins.org/Industrial/characteristics.htm>).

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claims 1,2,4-8,10-17,19,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (US 5706980) in view of Borek et al. (US 5695805) and Zukerman et al. (US 6103328).

19. Regarding claims 1,2,4-8,10-17,19 and 20, Dickerson teaches a two compartment container with pour openings for restricted flow adapted to facilitate on-the-go consumption with milk in the first compartment and a cereal in the second compartment, as recited in claims 1,5,7, and 14 (Abstract, Column 2, line 50-Column 3, line 7, Figures). The cereal compartment may be reusable (i.e. packed by the consumer) or pre-packaged (Column 7, lines 10-40). Although Dickerson is silent in teaching the cereal is spherically shaped *per se*, Dickerson shows spherical shapes in Figures 1 and 8. Figures 1 and 8 are drawn with a three dimensional perspective where the cereal represented by a circular shape, and in a three dimensional perspective such circular shapes are conventionally understood to be spherical as recited in claims 1,10, and 19. Dickerson is silent in teaching the cereal has a particular density (such as not less than 225 g/100cuin as recited in claims 1,11,14 or 225-375 g/100cuin as recited in claims 4,12, and 15) or a particular diameter (such as less than 0.4 in as recited in



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claims 1,7, and 16 or 0.2-.4 as recited in claims 2, 8, and 17). Dickerson is also silent in teaching puffed cereal as recited in claims 6, 13, and 20.

20. Borek et al. are relied on as evidence of a conventional spherically shaped cereal, Cocoa Puffs®, which is puffed as recited in claims 6, 13, and 20, that has a diameter of about 10 mm ( or 0.39 in) as recited in claims 1,2,7,8,16, and 17 (See Example 3 in Column 9).

21. Zuckerman et al. are relied on as evidence of the conventional density of the spherically shaped puffed cereal Cocoa Puffs®. The density is 0.1498 g/cc or 245 g/100 cu in as recited in claims 1,4,11,12, 14, and 15 (See Column 1, lines 50-60).

22. Therefore it would have been obvious to modify the illustrated spherically shaped cereal of Dickerson and select any commercially available spherical cereal, such as Cocoa Puffs®, since one would have been substituting one conventional spherically shaped cereal for another. It would have been further obvious to modify the spherically shaped cereal of Dickerson spherical to include a puffed cereal as recited in claims 6,13, and 20, a diameter of about 0.39 in as recited in claims 1,2,7,8,16, and 17 and a density of 225-375 g/100 cu in as recited in claims 1,4,11,12, 14, and 15 since these are known characteristics of Cocoa Puffs®.

23. Claims 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (US 5706980) in view of Borek et al. (US 5695805) and Zukerman et al. (US 6103328) as applied to claims 1,2,4-8,10-17,19,20 above, further in view of (Van Hulle et al. US 4409250)

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24. Regarding claim 3, Dickerson teaches a spherical cereal, but is silent in teaching a diameter of 0.2-0.25 inch. Van Hulle et al. , who also teach a puffed spherical cereal, are relied on as evidence of the conventionality of a puffed spherical cereal having a puffed diameter of anywhere from 4 to 20mm (i.e. 0.15 in to 0.78 in), since the initial diameter can be 2-10 mm and puffing will cause the cereal to expand by at least two-fold (Column 7, lines 25-32, Column 13, line 38 to Column 14, line5). Therefore, it would have been obvious to select a diameter between 0.2 and 0.25 in since one would have been substituting one spherical puffed cereal for another.

25. Claims 8,9 ,17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silver (US 4159066) as evident by Technology of Biscuits, Crackers and Cookies (2000) as applied to claims 7,11, and 14 above.

Regarding claims 8,9,17, and 18, Silver teaches sugar. As evident by Technology of Biscuits, Crackers and Cookies , coarse granulated sugar has a particle size of 940-1000 microns , which falls between 0.24 and 0.25 inches, and therefore including a particular piece size of 0.2-0.4 inches as recited in claims 8 and 17, 0.2-0.25 inches, as recited in claims 9 and 18 , would have been an obvious result effective variable of the particular type of sugar selected since it was well known that each grade of sugar is associated with a particular size range.

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26. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (US 5706980) as applied to claim 21 above, further in view of Christianson (US 3686001), Von Fulger (US 4759942), and Newarski (US 5727679).

27. Dickerson teaches spherical cereal, but is silent in teaching a particular diameter or density as recited in claim 22 or that the cereal is puffed as recited in claim 23.

28. Christianson is relied on as evidence of the conventional commercial spherical cereals (such as Cocoa Puffs ® in Example 1) that are puffed R-T-E's having (1) a density between 5 cu-in/oz and 35 cu-in /oz, or 567 g/cu-in and 81 g/cu-in, and a diameter of about 0.25 in, which falls with the range of 0.2-0.4 (Column 1, lines 20-60, Column 2, lines 62-69, Column 3, lines 50-58, column 4, lines 40-55, Examples).

29. Von Fulger is relied on as further evidence of the conventional densities found in commercially available spherical puffed R-T-E's (such as Trix ®) are preferably in range of 279-492 g/100 cu-in (i.e. 0.17 g/cc to 0.3 g/cc). Von Fulger teaches this is a desirable density range for R-T-E since Von Fulger teaches a method for obtaining this range of densities for high bran products, which do not normally have densities in this range (Abstract, Column 6, lines 3-10, Column 8, lines 5-9).

30. Newarski is relied on as further evidence of the conventionality of packaging milk and puffed R-T-E's in connected containers (Abstract, Column 1, lines 50-66, Column 4, lines 43-50).

31. Therefore, once it was known to use spherical cereal, selecting any commercially available spherical cereal having the recited dimension or density, would have been obvious because it was well known that the commercially available puffed spherical R-

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T-E's have a consumer preferred density between 225-375 g/100 cu-in and it was well known to package puffed R-T-Es with milk in connected containers. Furthermore, it was also well known that these spherical puffed R-T-E's have a diameter of 0.2-0.4 inches. One would merely be substituting one conventional spherically shaped R-T-E for another.

32. Claims 32,33,35-41,43-45,49-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (US 5706980) in view of Borek et al. (US 5695805) and Zukerman et al. (US 6103328)

33. Regarding claims 32,33,35-41,43-45, Dickerson teaches a method of manufacturing a packaged consumable product comprising providing a two compartment container with pour openings for restricted flow adapted to facilitate on-the go consumption , dispensing milk in the first compartment and a cereal into the second compartment, as recited in claims 32,38,39,45,(Abstract, Column 2, line 50-Column 3, line 7, Figures). The cereal compartment may be reusable (i.e. dispensing the milk and cereal by the consumer)or pre-packaged, which includes dispensing by a manufacture (Column 7, lines 10-40). Although Dickerson is silent in teaching the cereal is spherically shaped *per se*, Dickerson shows spherical shapes in Figures 1 and 8. Figures 1 and 8 are drawn with a three dimensional perspective with the cereal represented by a circular shape, which are substantially uniform in *shape*, as recited in claims 36 and 44. In a three dimensional perspective such circular shapes are conventionally understood to be spherical as recited in claims 37and 43. Dickerson is

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silent in teaching the cereal has a particular density (such as not less than 225 g/100cuin as recited in claim 39 or 225-375 g/100cuin as recited in claims 35 and 40) or a particular diameter (such as less than 0.4in as recited in claim 32, or 0.2-.4 as recited in claims 33 and 41).

34. Borek et al. are relied on as evidence of a conventional spherically shaped cereal, Cocoa Puffs ®, which is puffed and has a diameter of about 10 mm (or 0.39 in) as recited in claims 32,33, and 41 (See Example 3 in Column 9).

35. Zuckerman et al. are relied on as evidence of the conventional density of the spherically shaped puffed cereal--Cocoa Puffs ®. The density is 0.1498 g/cc or 245 g/100 cu in as recited in claims 35,39,and 40 (See Column 1, lines 50-60).

36. Therefore it would have been obvious to modify the illustrated spherically shaped cereal of Dickerson with a commercial available spherical cereal, such as Cocoa Puffs ®, since one would have been substituting one conventional spherically shaped cereal for another. It would have been further obvious to modify the spherically shaped cereal of Dickerson spherical to include a diameter of about 0.39 in as recited in claims 32,33, and 41 and a density between 22-375 g/100 cu in as recited in claims 35, 39 and 40 since these are known characteristics of Cocoa Puffs ®.

37. Regarding claims 49 and 50, Dickerson teaches one of the problems in attempting to consume both milk and cereal is the varying flow characteristic and size of cereals (Column 3, lines 10-16). Dickerson also teaches the cereal opening is sized 10-30% of the lid opening (may be larger or smaller) and sized to fit the mouth of the user, which would be the cross-section of pour opening(Column 4, lines 50-64). Therefore,

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because Dickerson teaches the lid opening is fixed (i.e. sized of the mouth of the user) and consumption problems result from cereal size it would have been obvious to select an outer dimension of cereal based on the desired gravity induced flow since the larger, or even more varied, the cereal size the more restricted the flow through the fixed cross-sectional opening would be.

38. Regarding claims 51 and 52, Dickerson teaches one of the problems in attempting to consume both milk and cereal is the varying flow characteristic and size of cereals (Column 3, lines 10-16). Dickerson also teaches the cereal opening is sized 10-30% of the lid opening (may be larger or smaller) and sized to fit the mouth of the user, which would be the cross-section of pour opening (Column 4, lines 50-64). Because Dickerson teaches cereals vary in flow characteristics (i.e. to which density and shape contribute) and size, it would have been obvious to optimize a process for any given cereal formulation such that a uniform density, size, and shape could be obtained since this would overcome the problem of consuming the cereal by providing *uniform* flow characteristics and *uniform* shape.

39. Claims 33, 34, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silver (US 4159066) as evident by Technology of Biscuits, Crackers and Cookies (2000) as applied to claims 32, 36, 39, 44 above.

40. Regarding claims 33, 34, 41 and 42 Silver teaches sugar. As evident by Technology of Biscuits, Crackers and Cookies, coarse granulated sugar has a particle size of 940-1000 microns, which falls between 0.24 and 0.25 inches, and therefore to

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select any particular piece size of 0.2-0.4 inches as recited in claims 33 and 41, 0.2-0.25 inches, as recited in claims 34 and 42, would have been depended on the particular type of sugar selected.

41. Claims 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (US 5706980) as applied to claim 21 above.

42. Regarding claims 46-48, Dickerson teaches uniform shapes by showing circles in the drawing, which in the 3 dimensional perspective given in Figures 1 and 8 would be taken to mean spheres. Furthermore, Dickerson teaches one of the problems in attempting to consume both milk and cereal is the varying flow characteristic and size of cereals (Column 3, lines 10-16). Because it is conventionally known that shape and density, in addition to size, affect the flow characteristics of particles, it would have been obvious to select *uniform* density and size as recited in claims 46 and 48, in addition to the uniform shape taught by Dickerson since this would overcome the problem of consuming the cereal by providing *uniform* flow characteristics. Because it is conventionally known that a true sphere would provide a more uniform flow characteristic than a non-true sphere, it would have been further obvious to select a dimension that deviates no more than 10%, as recited in claim 47 in any one dimension of a true sphere since this would overcome the problem of consuming the cereal by providing *uniform* flow characteristics.

***R sponse to Arguments***

43. Applicant's arguments with respect to the amended set of claims 1-20,32-52 have been considered but are moot in view of the new ground(s) of rejection.

44. Applicant's arguments with respect to claims 21-24 have been fully considered but they are not persuasive.

45. With respect to claim 21-24, applicant argues that by Dickerson teaching a variety of comestibles including cereals , nuts, and snack foods and representing the comestibles with circles in the Figures, Dickerson does not teach a dry comestible that is substantially uniform in at least one characteristic selected from the group consisting of a shape, size and density. However, Dickerson teaches a *substantially uniform shape* . The shapes in the Figures are *all* circular, albeit not the same size. Using applicant's specification for guidance (Page 7, lines 13-25 ), one finds the term *shape* refers to a comestible having a flat or spherical from, while the term *size* refers to a measurable dimension such as a diameter. Thus, based on applicant's disclosure, one would ascertain that the Figures of Dickerson teach particles that are *substantially uniform in shape*, regardless of whether they are taken to be circles, spheres, or cylinders. The profiles of the comestibles are *uniform in shape*.

46. Additionally applicant argues that Dickerson does not teach spheres, but the circles could represent cylinders. However, the "circles" are included in a drawing providing a *three-dimensional* perspective (Figures 1 and 8). Applicant is being provided an example of cereals of cylinders and spheres shown in a *three-dimensional*



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perspective (See Extrusion Cooking pg. 138). The sphere appears as a circle, and the cylinder does not.

47. Furthermore, in response to applicant's argument that the Dickerson fails to teach promoting uniform gravity induced flow, this feature is not recited in the claim 21. In fact, one could meet the limitations of claim 21 by including a snack food of uniform density, yet have non-uniform shapes such that uniform flow would not be promoted (e.g. a crushed cookie). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

#### ***Terminal Disclaimer***

48. The terminal disclaimers filed on August 9, 2002 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of Application Nos. 09/781,581 and 09/781,582 has been reviewed and is accepted. The terminal disclaimer has been recorded.

#### ***Conclusion***

49. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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50. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

51. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

52. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

53. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen   
Examiner  
Art Unit 1761  
November 13, 2002

  
MILTON I. CANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700